Federal Court  Cour fédérale

Date: 20220406

Docket: IMM-3198-21

Citation: 2022 FC 483

Ottawa, Ontario, April 6, 2022

PRESENT: The Hon Mr. Justice Henry S. Brown

BETWEEN:

MEHRNOOSH BESTAR

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] This is an application for judicial review of a decision by an Officer of the High Commission of Canada located in Singapore dated April 23, 2021 [Decision]. The Officer refused the Applicant's application for a study permit and determined her application did not meet the requirements of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 [*IRPA*], or

subsection 216(1) of the *Immigration and Refugee Protection Regulations,* SOR/2002-227 [*Regulations*].

II. Facts

[2] The Applicant is a 53-year old citizen of Iran residing in Malaysia since 2007 as a temporary resident. She completed her MBA in 2010 and has been working in Malaysia as a Manager in the International Marketing Department at HELP University since 2011. In April 2021, she applied for a study permit to Canada after being accepted into the four-year B. Comm., Digital Business Management [DBM] program at Humber College in Ontario, and four months of online ESL.

III. Decision under review

[3] In April 2021, the Officer rejected the Applicant's study permit because they were not satisfied she would leave Canada at the end of her stay based on 1) the purpose of her visit, 2) her personal assets and financial status, 3) her family ties in Canada and in her country of residence, and 4) her immigration status.

[4] The Global Case Management System [GCMS] notes set out the Officer's Decision in its entirety:

> 52 yo single female, Iranian national in Malaysia, to attend Humber College for 4 months of ESL followed by BComm degree strting in Sep2021. PA has MBA completed in 2009. Resident in Malaysia since 2007. Is Manager- International Marketing Department @ HELP University since 2011. States she needs to upgrade skills due to changing nature of her work and will return

> to her current position afterwards. This is premised on technological change, and PA is going to do a full BComm degree. The link between these things is not entirely clear - states she needs to learn digital marketing but a four-year (more with ESL) degree on top of the MBA she already holds seems excessive for the stated purpose. States she is eligible to return to Malaysia as employer will sponsor her work permit afterwards but this is not a given - questionable that the employer could reasonably commit to this four years ahead of time (support letter from HELP University noted). Proof of funds shows rapidly rising balance including a number of cash deposits in first account shown. Largest account is a fixed deposit with 327K MYR that includes no balance history and no indication how long it has been held. Income tax docs shows low salary equivalent to about $25K CAD annually. PA apparently also has an active housing loan, per submissions. PA has temp status in Malaysia and has been away from country of citizenship many years. IELTS of 6.0, which is on the low side. ESL component of studies is questionable given availability of similar program in-country at much lower cost. /// On the whole, I am not satisfied with funds or that PA would be a bona fide student in Cda. /// Purpose, assets, ties, Imm status.

IV. Issues

[5] Both the Applicant and Respondent submit the only issue is whether the Decision is reasonable. However, the Applicant makes brief submissions on veiled credibility findings which is a matter of procedural fairness. I will review:

a) Is the Decision reasonable?

b) Did the Officer breach the Applicant’s right to procedural fairness?

V. Standard of Review

A. *Reasonableness*

[6] With regard to reasonableness, in *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, issued at the same time as the Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], the majority per Justice Rowe explains what is required for a reasonable decision, and what is required of a court reviewing on the reasonableness standard:

> [31] A reasonable decision is "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov*, at para. 85). Accordingly, when conducting reasonableness review "[a] reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with 'respectful attention' and seeking to understand the reasoning process followed by the decision maker to arrive at [the] conclusion" (*Vavilov*, at para. 84, quoting *Dunsmuir*, at para. 48). The reasons should be read holistically and contextually in order to understand "the basis on which a decision was made" (*Vavilov*, at para. 97, citing *Newfoundland Nurses*).
>
> [32] A reviewing court should consider whether the decision as a whole is reasonable: "what is reasonable in a given situation will always depend on the constraints imposed by the legal and factual context of the particular decision under review" (*Vavilov*, at para. 90). The reviewing court must ask "whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov*, at para. 99, citing *Dunsmuir*, at paras. 47 and 74, and *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5, at para. 13).
>
> [33] Under reasonableness review, "[t]he burden is on the party challenging the decision to show that it is unreasonable" (*Vavilov*, at para. 100). The challenging party must satisfy the court "that any shortcomings or flaws relied on ... are sufficiently central or

> significant to render the decision unreasonable" (*Vavilov*, at para. 100).
>
> [Emphasis added]

[7] The Supreme Court of Canada in *Vavilov* at para 86 states, "it is not enough for the outcome of a decision to be justifiable. Where reasons for a decision are required, the decision must also be justified, by way of those reasons, by the decision-maker to those to whom the decision applies," and provides guidance that the reviewing court decide based on the record before them:

> [126] That being said, a reasonable decision is one that is justified in light of the facts: *Dunsmuir*, para. 47. The decision maker must take the evidentiary record and the general factual matrix that bears on its decision into account, and its decision must be reasonable in light of them: see *Southam*, at para. 56. The reasonableness of a decision may be jeopardized where the decision maker has fundamentally misapprehended or failed to account for the evidence before it. In *Baker*, for example, the decision maker had relied on irrelevant stereotypes and failed to consider relevant evidence, which led to a conclusion that there was a reasonable apprehension of bias: para. 48. Moreover, the decision maker's approach would *also* have supported a finding that the decision was unreasonable on the basis that the decision maker showed that his conclusions were not based on the evidence that was actually before him: para. 48.
>
> [Emphasis added]

[8] Moreover, *Vavilov* requires the reviewing court to assess whether the decision subject to judicial review meaningfully grapples with the key issues:

> [128] Reviewing courts cannot expect administrative decision makers to "respond to every argument or line of possible analysis" (*Newfoundland Nurses*, at para. 25), or to "make an explicit finding on each constituent element, however subordinate, leading to its final conclusion" (para 16). To impose such expectations would have a paralyzing effect on the proper functioning of

> administrative bodies and would needlessly compromise important values such as efficiency and access to justice. However, a decision maker's failure to meaningfully grapple with key issues or central arguments raised by the parties may call into question whether the decision maker was actually alert and sensitive to the matter before it. In addition to assuring parties that their concerns have been heard, the process of drafting reasons with care and attention can alert the decision maker to inadvertent gaps and other flaws in its reasoning: *Baker*, at para. 39.

B. *Principle of Procedural Fairness*

[9] Issues of procedural fairness are reviewed on the correctness standard: *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, per Binnie J at para 43. That said, I note in *Bergeron v Canada (Attorney General)*, 2015 FCA 160, per Stratas JA at para 69, the Federal Court of Appeal says a correctness review may need to take place in "a manner 'respectful of the [decision-maker's] choices' with 'a degree of deference': Re: *Sound v Fitness Industry Council of Canada*, 2014 FCA 48, 455 N.R. 87 at paragraph 42." But see *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 [per Rennie JA]. In this connection I also note the Federal Court of Appeal's recent decision holding judicial review of procedural fairness issues is conducted on the correctness standard: see *Canadian Association of Refugee Lawyers v. Canada (Immigration, Refugees and Citizenship*), 2020 FCA 196 per de Montigny JA [Near and LeBlanc JJA concurring]:

> [35] Neither *Vavilov* nor, for that matter, *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, have addressed the standard for determining whether the decision-maker complied with the duty of procedural fairness. In those circumstances, I prefer to rely on the long line of jurisprudence, both from the Supreme Court and from this Court, according to which the standard of review with respect to procedural fairness remains correctness.

[10] I also understand from the Supreme Court of Canada's teaching in *Vavilov* at para 23 that the standard of review for procedural fairness is correctness:

> [23] Where a court reviews the merits of an administrative decision (i.e., judicial review of an administrative decisions other than a review related to a breach of natural justice and/or the duty of procedural fairness), the standard of review it applies must reflect the legislature's intent with respect to the role of the reviewing court, except where giving effect to that intent is precluded by the rule of law. The starting point for the analysis is a presumption that the legislature intended the standard of review to be reasonableness.
>
> [Emphasis added]

[11] In *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 50, the Supreme Court of Canada explains what is required of a court reviewing on the correctness standard of review:

> [50] When applying the correctness standard, a reviewing court will not show deference to the decision maker's reasoning process; it will rather undertake its own analysis of the question. The analysis will bring the court to decide whether it agrees with the determination of the decision maker; if not, the court will substitute its own view and provide the correct answer. From the outset, the court must ask whether the tribunal's decision was correct.

VI. Analysis

A. *Is the Decision Reasonable?*

[12] In overview, the onus is on the applicant for a study permit to demonstrate on a balance of probabilities that he or she will leave Canada after the authorized stay (*Patel v Canada (Citizenship and Immigration)*, 2017 FC 570 [per Mosley J] at para 12). Moreover, an applicant has a fundamental duty to provide sufficient evidence to support a study permit application (*De*

La Cruz Garcia v Canada (Citizenship and Immigration), 2016 FC 784 [per Roy J] at para 8-12 [*Garcia*]).

[13] It is well settled that Visa Officers have expertise in assessing study permit applications (*Garcia*, *supra* at para 14), and are to be give a wide discretion to approve or deny study permit applications [*Akomolafe v Canada (Citizenship and Immigration)*, 2016 FC 472 [per LeBlanc J., as he then was] at para 12]. In addition, considerable deference is owed to Visa officers given their special expertise [*Hakimi v Canada (Citizenship and Immigration)*, 2015 FC 657 [per Fothergill J] at para 20.

(1) Purpose of study

[14] The Applicant submits the Officer erred in their assessment of her stated purpose of study in Canada. The Applicant provided a study plan, supporting documents, and counsel's submissions in support of her application. The purpose of study was to obtain new skills for a digital world not provided in the more theoretical MBA degree. The Applicant also provided a letter from her current employer stating:

> New technology has brought about enormous changes in our competitive marketing landscape in recent years. Mehrnoosh has decided to pursue studies in Digital Business Management in Canada, which will allow her to learn, enhance, and expand her knowledge in this field.
>
> We fully support Mehrnoosh in her academic pursuits, and we sincerely hope that Mehrnoosh will continue her employment at HELP University after she graduates. The skills and knowledge she acquires through her studies in Canada will be very valuable in our workplace, and we are eager to put her new knowledge from her Canadian studies into practice at HELP University.

[15] The Officer found her choice of program “not entirely clear” because a four-year degree on top of the MBA she already holds seemed “excessive for the stated purpose.” I note, and it was agreed at the hearing, the letter from her employer is not a binding offer of re-employment on the Applicant’s return from four-plus years outside of Malaysia. Nor does her employer require her to take either the ESL or Humber College DBM courses.

[16] I accept that taking these courses is what the Applicant wishes to do. That said, I am unable to find the Officer’s assessment that these additional studies are excessive, to be unreasonable, particularly given jurisprudence requiring this Court to defer to the Officer in weighing and assessing the evidence, noting their experience in visa applications.

[17] The key issue is whether this assessment links to the finding they were not satisfied the Applicant will leave Canada at the end of her stay. In my view, this is a reasonable and justified conclusion: the onus is on the Applicant, and the Officer was not satisfied the purpose justified such a long course and stay in Canada. I am not prepared to reassess or reweigh the evidence in this respect.

(2) Financial evidence and ties outside of Canada

[18] Regarding the Applicant’s financial evidence and ties outside of Canada, the Officer states:

> Proof of funds shows rapidly rising balance including a number of cash deposits in first account shown. Largest account is a fixed deposit with 327K MYR that includes no balance history and no indication how long it has been held. Income tax docs shows low salary equivalent to about $25K CAD annually. PA apparently also

> has an active housing loan, per submissions.PA has temp status in Malaysia and has been away from country of citizenship many years.

[19] The Officer had concerns with the financial situation, and again I do not find them unreasonable. The largest account is the most important and has about $99,000.00 Canadian in it. However, there is nothing to indicate where that money came from, or whether it was a short-term loan or repayable gift of some sort. There is nothing to indicate if it was made just for the purpose of meeting the minimum requirements ($10,000 plus tuition times 4 years) which it does, or whether it was an inheritance. Again, the onus is on the Applicant to make her case. In my view these questions should have been anticipated and addressed. The Officer legitimately pointed to an omission in this application.

[20] That said, once again, the key issue is whether the Officer's reasonable financial assessment links to the finding they were not satisfied the Applicant will leave Canada at the end of her stay. There is no doubt, and the parties agree, the Applicant had a duty to show sufficient funds to cover her tuition each year she is here. That depended entirely on the largest account. Given the absence of critical detail, it seems to me and I find the Officer's conclusion reasonable because if the Applicant's money ran out early, it is an open question whether she would stay or leave. I would add this consideration would also be relevant in respect of what I understand is the separate and additional requirement that the Applicant have the financial wherewithal to pay for tuition and living expenses throughout her stay.

(3) Immigration status in Malaysia

[21] The Applicant has maintained valid status in Malaysia since 2007 and is eligible for a long-term visa under the Malaysia My Second Home Program (MM2H), which program however was temporarily suspended at the time she submitted her study permit application. The Applicant expressed no desire to return to Iran; indeed her focus is to better herself which is not possible in her country of nationality. Notably, her status in Malaysia must be renewed such that at the end of four plus years in Canada, she may no longer have status in Malaysia and thus be required to return to Iran, where it appears she has no interest in returning. The Respondent submits, and I agree, that the Officer assessed the Applicant's status in Malaysia as being temporary because the MM2H program was suspended at the time of her application, making this aspect of the Decision reasonable. Given the Applicant's statements and 15-year absence from residing in Iran, there was no reason for the Officer to assess if she would return to Iran. This finding is in my view, reasonably linked to the finding by the Officer that they were not satisfied the Applicant will leave Canada at the end of her studies.

(4) Language skills and ESL plans in Canada

[22] The Applicant submits the Officer "appears to be skeptical of the purpose of the proposed study for ESL reasons, given that similar programs are available in country." The Applicant submits the language benefits that drew her to the Humber program must be considered in relation to (1) the years spent immersed in an English speaking part of Canada, which cannot be substituted for a local ESL class, and (2) that the language benefits of the program are closely connected to learning the central content of the DBM course load in English. The Officer said

"ESL component of studies is questionable given availability of similar program in-country at much lower cost."

[23] The Respondent submits, and I agree, an Officer was justified in considering the availability of similar programs locally in assessing study permit applications, see for example *Cayanga v Canada (Citizenship and Immigration),* 2017 FC 1046 [per Boswell J]; *Yue v Canada (Minister of Citizenship and Immigration),* 2005 FC 289 [per Phelan J].

B. *Did the Officer breach the Applicant's procedural fairness?*

[24] The Applicant in her Memorandum briefly submits if the Officer was concerned that her stated purpose was not credible, or if they were suspicious of whether she genuinely presented the reasons for the selected program, it was open to them to say so. She submits the lack of analysis of her stated purpose and supporting documents suggest the Officer made a veiled credibility finding, and that where an Officer has concerns about the genuineness of a temporary residence application based on credibility, they must provide the Applicant with an opportunity to respond (*Patel v Canada (Citizenship and Immigration),* 2020 FC 77 [per Diner J] at para 10).

[25] On this point, the Respondent submits "the Officer was not required to interview or give the Applicant a chance to respond to the concerns raised by the inadequate evidence in their application" (*Ibabu v Canada (Citizenship and Immigration),* 2015 FC 1068 [per Gascon J] at para 35), and the Officer "is entitled to rely on insufficiency of evidence without making an adverse credibility finding" (*Masasiwa v Canada (Citizenship and Immigration),* 2021 FC 617 [per Walker J]).

[26] As noted above, the Officer's findings are reasonable. There is no duty to provide a running score. The onus was on the Applicant to make a satisfactory application. The Officer had reasonable concerns on the four points noted above, and in particular in relation to the adequacy of information provided concerning the largest account discussed above.

[27] In my view, the Officer was not required to provide the Applicant with an opportunity to respond, keeping in mind that procedural fairness owed to visa and study permit applicants falls at the low end of the spectrum.

VII. Conclusion

[28] In my respectful view, the Applicant has not shown the decision of the Officer was unreasonable. In my view, the Decision is transparent, intelligible and justified based on the facts and law before the decision maker. Therefore, judicial review must be dismissed.

VIII. Certified Question

[29] Neither party proposed a question of general importance, and none arises.

JUDGMENT in IMM-3198-21

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed, no question of general importance is certified, and there is no order as to costs.

"Henry S. Brown"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Rylee Raeburn-Gibson	FOR THE APPLICANT
Maria Burgos	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Mamann, Sandaluk & Kingwell LLP Migration Law Chambers Barrister and Solicitor Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT